

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2 IN AND FOR THE COUNTY OF SAN FRANCISCO  
3 BEFORE THE HONORABLE HAROLD E. KAHN, JUDGE PRESIDING  
4 DEPARTMENT NUMBER 220

5 ---000---

6 JOSEPH GARZA, ET AL., )  
7 ) CASE NO. CGC-05-438144  
8 PLAINTIFFS, )  
9 VS. )  
10 ASBESTOS DEFENDANTS (B\*P) AS )  
11 REFLECTED ON EXHIBITS ET AL., )  
12 (UNLIMITED), )  
13 DEFENDANTS. )

13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 THURSDAY, OCTOBER 28, 2010

15 APPEARANCES OF COUNSEL:

16 FOR THE PLAINTIFFS/MOVING PARTIES JOSEPH GARZA AND MARY  
17 GARZA:

18 COOK COLLECTION ATTORNEYS, PLC  
19 BY: DAVID J. COOK, ATTORNEY AT LAW  
20 NATHANIEL L. DUNN, ATTORNEY AT LAW  
21 165 FELL STREET  
22 SAN FRANCISCO, CALIFORNIA 94102-5102

23 FOR THE DEFENDANT/OPPOSING PARTY ASBESTOS CORPORATION  
24 LIMITED:

25 WILSON ELSER MOSKOWITZ EDELMAN & DICKER, LLP  
26 BY: MARY ELLEN GAMBINO, ATTORNEY AT LAW  
27 525 MARKET STREET, 17TH FLOOR  
28 SAN FRANCISCO, CALIFORNIA 94105-2725

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REPORTED BY: LAVENA WARD, CSR #7077  
OFFICIAL COURT REPORTER

1 THURSDAY, OCTOBER 28, 2010

2 MORNING SESSION

3 P R O C E E D I N G S

4 ---000---

5 **THE COURT:** LINE 2, GARZA VERSUS ASBESTOS DEFENDANTS.  
6 COUNSEL, STATE YOUR APPEARANCES.

7 **MR. COOK:** THANK YOU, YOUR HONOR.

8 DAVID COOK ON BEHALF OF THE JUDGMENT CREDITORS.

9 **MS. GAMBINO:** AND MARY ELLEN GAMBINO -- I'M SORRY.

10 **MR. DUNN:** NATHANIEL DUNN ALSO ON BEHALF OF THE  
11 JUDGMENT CREDITORS, YOUR HONOR.

12 **MR. GAMBINO:** GOOD MORNING.

13 MARY ELLEN GAMBINO FOR ASBESTOS CORPORATION LIMITED.

14 **THE COURT:** GOOD MORNING.

15 SO AS AN INITIAL MATTER OF HOUSEKEEPING, AT THE LAST  
16 HEARING, WHICH I DON'T HAVE A DATE IN FRONT OF ME -- IN  
17 THIS DEPARTMENT ON THIS CASE -- YOU MAY HAVE BEEN IN  
18 ANOTHER DEPARTMENT, I DON'T KNOW -- THERE WAS AN EXHIBIT A  
19 MARKED, AND THE REPRESENTATION WAS THAT IT WOULD BE FILED,  
20 SO, WE'RE GOING TO HAVE IT WITHDRAWN AS TO THE LAST  
21 HEARING, BUT IT COULD BE FILED AS TO THIS HEARING, AND  
22 THAT'S GOING TO BE YOUR RESPONSIBILITY, MR. COOK, CORRECT?

23 **MR. COOK:** YOUR HONOR, I TAKE OWNERSHIP OF THAT  
24 ISSUE.

25 **THE COURT:** SO, THERE'S REALLY TWO ISSUES TODAY.  
26 THERE'S THE ASSIGNMENT OF RIGHTS AND THERE'S THE TURNOVER  
27 ORDER. ALTHOUGH, IT'S TRUE THAT THERE'S A THIRD ISSUE OF  
28 RESTRAINING ORDER. I THINK THE RETRAINING ORDER HANGS OR

1 FALLS ON THE ASSIGNMENT OF RIGHTS.

2 EVERYBODY AGREE TO THAT?

3 **MR. COOK:** YES, YOUR HONOR.

4 **MS. GAMBINO:** YES, YOUR HONOR.

5 **THE COURT:** SO, THERE REALLY ARE ONLY TWO.

6 SINCE I DIDN'T GET AN E-MAIL FROM EITHER OF YOU, LET  
7 ME FIND OUT IF BOTH ISSUES ARE BEING CONTESTED.

8 I UNDERSTAND, MS. GAMBINO, YOU ARE CONTESTING THE  
9 PORTION OF THE TENTATIVE RULING REGARDING THE ASSIGNMENT  
10 OF RIGHTS. ARE YOU CONTESTING THE PORTION REGARDING THE  
11 TURNOVER ORDER, MR. COOK?

12 **MR. COOK:** NO, YOUR HONOR. I -- ALTHOUGH  
13 RESPECTFULLY DISAGREE, THE ORDER IS THE ORDER, SO WE'LL  
14 JUST LEAVE IT AS IS.

15 **THE COURT:** OKAY. SO I'M GOING TO CONFIRM THAT  
16 PORTION OF THE TENTATIVE.

17 AND PERHAPS I SHOULD HAVE STATED, BUT I'M SURE THAT  
18 YOU ALL UNDERSTOOD THAT I RECOGNIZED THAT THE *PACIFIC*  
19 *DECISION* CASE WAS AN ATTACHMENT CASE, BUT THE LANGUAGE OF  
20 THE ATTACHMENT LAW IS IDENTICAL TO THE LANGUAGE OF THE  
21 TURNOVER LAW INSOFAR AS THIS ISSUE IS CONCERNED. BUT, WE  
22 NEEDN'T SPEND ANYMORE TIME ON THIS.

23 THE ASSIGNMENT OF RIGHTS, I SUSPECT THAT YOU BOTH  
24 LOOKED LONG AND HARD, AS DID I, FOR PUBLISHED CALIFORNIA  
25 AUTHORITY. I FOUND NONE. AND AS FAR AS I COULD TELL,  
26 NEITHER OF YOU FOUND ANY.

27 **MS. GAMBINO:** THAT'S CORRECT, YOUR HONOR.

28 **MR. COOK:** YOUR HONOR, I DO THIS FOR A LIVING, AS

1 YOU'VE COME TO KNOW. AND I'VE BEEN DEALING WITH  
2 ASSIGNMENT OF RIGHTS FROM THE DAY OF ITS ENACTMENT,  
3 JULY 1, 1983. WE DO THESE ROUTINELY. WE DO THESE VERY  
4 ROUTINELY. SO, THE ANSWER IS NO, WE HAVEN'T FOUND ANY; IF  
5 THERE WAS, IT WOULD HAVE BEEN MINE.

6 THE COURT: OKAY.

7 THE FACT THAT COUNSEL DOESN'T FIND SOMETHING DOESN'T  
8 DETER ME FROM LOOKING ON MY OWN. AND I DID LOOK ON MY  
9 OWN.

10 I RECOGNIZE THAT YOU BOTH HAVE FALL-BACK POSITIONS AS  
11 TO AUTHORITY. THE JUDGMENT CREDITOR'S FALL-BACK ON A  
12 TREATISE WHICH IS AUTHORED OR CO-AUTHORED BY JUDGE AHART  
13 -- A-H-A-R-T -- AND THE JUDGMENT DEBTOR CITES AN  
14 UNPUBLISHED DECISION OF A FEDERAL COURT.

15 I FOUND NEITHER OF THEM PERSUASIVE OR HELPFUL. I  
16 LOOKED SIMPLY AT THE STATUTE. AND SINCE I COULDN'T FIND  
17 ANY LEGISLATIVE HISTORY MATERIALS, I AM -- MY BEGINNING  
18 AND END IS THE STATUTE. IT SEEMS TO ME THAT -- OH,  
19 ACTUALLY, THAT'S NOT ENTIRELY TRUE. I LOOKED AT THE  
20 ANNOTATED STATUTE, THE WEST VERSION. AND IN THE  
21 ANNOTATION I FOUND SOMETHING TO THE EFFECT THAT THE  
22 ASSIGNMENT OF RIGHTS STATUTE WAS INTENDED TO BE A  
23 SUPPLEMENT TO, AND IN SOME INSTANCES, BROADER THAN THE  
24 EXECUTION STATUTES.

25 SO THAT LED ME TO BELIEVE THERE WAS SOME MERIT TO THE  
26 POSITION OF THE JUDGMENT CREDITORS THAT THE FACT THAT YOU  
27 CAN'T EXECUTE ON AN OUT-OF-STATE OR OUT-OF-COUNTRY BANK  
28 ACCOUNT DOESN'T MEAN THAT IT DOESN'T FALL WITHIN THE

1 ASSIGNMENT OF RIGHTS STATUTE.

2 AND THEN I ASKED MYSELF THE QUESTION: IS A BANK  
3 ACCOUNT SOMETHING THAT A LEGISLATURE, IF THEY INTENDED TO  
4 INCLUDE IT IN THE ASSIGNMENT OF RIGHTS STATUTE, WOULD HAVE  
5 EXCLUDED IT EXPRESSLY. BECAUSE WHEN ONE TALKS ABOUT  
6 ENFORCEMENT OF JUDGMENT, IT DOESN'T TAKE VERY LONG TO  
7 START THINKING ABOUT BANK ACCOUNTS. I WOULD PRESUME IT'S  
8 ONE OF THE FIRST THINGS THAT ONE THINKS ABOUT.

9 BUT, AS THERE'S NO DISPUTE HERE, THE STATUTE HAS NO  
10 MENTION OF BANK ACCOUNT. INSTEAD, IT IS WORDED IN KIND OF  
11 A STRANGE WAY. IT SAYS, "ALL OR PART OF A RIGHT TO  
12 PAYMENT DUE OR BECOME DUE WHETHER OR NOT THE RIGHT IS  
13 CONDITIONED ON FUTURE DEVELOPMENTS, INCLUDING BUT NOT  
14 LIMITED TO THE FOLLOWING TYPES OF PAYMENT." AND THEN IT  
15 LISTS SIX TYPES OF PAYMENTS, SEVERAL OF WHICH ARE THINGS  
16 THAT COME TO MIND MUCH LESS READILY WHEN YOU ARE THINKING  
17 OF ENFORCEMENT OF JUDGMENTS THAN BANK ACCOUNTS.

18 SO, WAS THE OMISSION OF BANK ACCOUNTS INTENTIONAL? I  
19 FOUND NOTHING TO SUGGEST IT WAS, NOTHING TO SUGGEST IT  
20 WASN'T -- GREAT ISSUE FOR AN APPELLATE COURT IF IT EVER  
21 DECIDES TO ADDRESS IT -- AND I WOULD BE INTERESTED IN  
22 HEARING ARGUMENT ON THAT POINT. BECAUSE I HAD NO WAY OF  
23 DECIDING THAT RATIONALLY, I DECIDED TO TAKE A MORE LITERAL  
24 APPROACH TO THE STATUTE AND I THEN ASKED A QUESTION: IS A  
25 BANK ACCOUNT A RIGHT TO A PAYMENT? I THINK THE ANSWER IS  
26 INDISPUTABLY, YES. I FIND THE ACCOUNT HOLDER AT A BANK  
27 HAS A RIGHT TO BE PAID THE MONEY I HAVE IN THAT ACCOUNT.

28 THEN I ASKED THE QUESTION: IS THIS ASSIGNABLE?

1 BECAUSE THE FEDERAL DISTRICT COURT APPARENTLY THOUGHT IT  
2 WASN'T ASSIGNABLE. AND I PUT IN A WESTLAW KEYWORD SEARCH  
3 AND FOUND SEVERAL CASES, ONE OF WHICH I CITED IN THE  
4 TENTATIVE, WHICH SUGGEST THAT AS A MATTER OF COMMON  
5 PRACTICE OR BUSINESS PRACTICE, SUCH MATTERS AS BANK  
6 ACCOUNTS ARE ASSIGNABLE.

7 THAT'S THE ENTIRE ANALYSIS I DID AND THAT'S HOW I  
8 ENDED UP WITH THE TENTATIVE RULING. I WISH I COULD TELL  
9 YOU IT WAS MORE THOUGHTFUL AND MORE BASED ON LAW. I DO  
10 THIS BECAUSE IF I HAVE A FLAW IN MY REASONING, I WOULD  
11 LIKE IT POINTED OUT.

12 **MS. GAMBINO:** THANK YOU.

13 **THE COURT:** SO IT REALLY SHOULD BE MS. GAMBINO'S  
14 OPPORTUNITY TO SPEAK. SHE IS REPRESENTING THE AGGRIEVED  
15 PARTY AS TO THE TENTATIVE.

16 **MS. GAMBINO:** THANK YOU, YOUR HONOR.

17 AND I APPRECIATE YOUR ILLUMINATION ON WHAT YOUR  
18 ANALYSIS WAS. AND I BELIEVE THAT'S WHY WE ARE HERE TODAY  
19 TO GET SOME CLARIFICATION ON THE TENTATIVE RULING.

20 I ALSO APOLOGIZE THAT THE COURT DID NOT RECEIVE OUR  
21 E-MAIL. I UNDERSTOOD THAT IT HAD BEEN SENT. AND I  
22 APPRECIATE THE COURT HEARING US THIS MORNING.

23 I DO UNDERSTAND THE COURT'S DILEMMA HERE. THERE IS A  
24 PAUCITY OF LAW ON THIS POINT. AND, OF COURSE, WE DID  
25 RAISE IN OUR PAPERS THE *QUAESTOR* CASE -- Q-U-A-E-S-T-O-R  
26 -- IT IS A CASE WHICH IS AN UNPUBLISHED FEDERAL DISTRICT  
27 COURT DECISION IN THE CENTRAL DISTRICT OF CALIFORNIA. AND  
28 WE DID FEEL THAT THAT IS SOMETHING THE COURT COULD USE AS

1 A GUIDE IN MAKING ITS DECISION.

2 THE PROBLEM WE HAVE HERE IS THAT THE COURT HAS NOW  
3 ORDERED THE ASSIGNMENT OF RIGHTS TO BANK ACCOUNTS THAT  
4 POSSIBLY EXIST IN FIVE CANADIAN BANKS. THESE ARE NOT  
5 ASSETS THAT ARE DETERMINABLE. AND THAT'S A -- A WORD THAT  
6 I BELIEVE WAS USED IN THE *QUAESTOR* CASE. THESE ARE --  
7 BASICALLY, THESE ARE ABSTRACT RIGHTS. AND ACCORDING TO  
8 THAT CASE, THAT COURT -- AND AGAIN, I REALIZE THAT THIS IS  
9 NOT -- NOT ENTIRELY PERSUASIVE IN THIS DEPARTMENT, BUT  
10 THAT COURT DETERMINED THAT THE ASSETS HAD TO BE  
11 DETERMINABLE. THEY HAD TO BE ASSETS THAT HAD BEEN  
12 IDENTIFIED. AND, IN FACT, IN THAT CASE AS THIS COURT HAS  
13 ALREADY MENTIONED, THEY SAID THAT THE ASSETS HAD TO BE IN  
14 THE UNITED STATES, AND, OF COURSE, IN THIS CASE, THEY ARE  
15 NOT.

16 THE COURT: BUT THE JUDGMENT CREDITORS HERE ARE  
17 SHOOTING IN THE DARK.

18 MS. GAMBINO: THAT'S TRUE.

19 THE COURT: THEY HAVE REASON TO BELIEVE THAT ALL OR  
20 SUBSTANTIALLY ALL OF THE LIQUID ASSETS OF THE JUDGMENT  
21 DEBTOR RESIDE IN QUEBEC. MORE THAN THAT, THEY DO NOT  
22 KNOW, I PRESUME. AND SO THEY MAKE A GUESS THAT BECAUSE OF  
23 THE NATURE OF THE BUSINESS OF ASBESTOS CORP. LIMITED AS  
24 THEY UNDERSTAND IT, THEY THINK THAT THERE'S SOME CHANCE  
25 THAT ACL DOES BUSINESS WITH ONE OR MORE OF THE FIVE --  
26 WHAT THEY DESCRIBED, I HAVE NO IDEA, I MADE NO EFFORT TO  
27 CONFIRM THIS -- THAT THEY DESCRIBED AS THE FIVE LARGEST OR  
28 LEADING CANADIAN BANKS. THEY FREELY ADMIT THEY DON'T KNOW

1       WHETHER ACL HAS A BANK ACCOUNT IN ANY OF THEM OR MORE THAN  
2       ONE.  BUT I COULDN'T FIND -- AND I DID DO THIS SEARCH --  
3       ANY CALIFORNIA LAW THAT REQUIRES THAT YOU KNOW THAT  
4       THERE'S A SPECIFIC ACCOUNT IN THE CONTEXT OF AN ASSIGNMENT  
5       OF RIGHTS, WHICH ONLY ACTS UPON THE JUDGMENT DEBTOR, NOT  
6       UPON THE BANK.

7                I WOULD FIND IT VERY PERSUASIVE IF MY ORDER WAS TO  
8       ACT UPON ANY OF THESE BANKS.  IT DOESN'T.  IT HAS NO FORCE  
9       AND EFFECT AS TO ANY OF THESE BANKS.

10               AND IF I WAS ONE OF THE BANKS AND THERE WAS AN ORDER  
11       LIKE THIS THAT SOUGHT TO, OR PURPORTED TO AFFECT THE  
12       BANKS, I'D SAY, WELL, GIVE ME THE ACCOUNT NUMBERS, OR GIVE  
13       ME SOMETHING.  BUT, THE JUDGMENT DEBTOR KNOWS WHICH  
14       ACCOUNTS IT HAS AND WHERE.  AND BECAUSE IT'S LEGITIMATELY  
15       OR OTHERWISE CONCERNED ABOUT POTENTIAL LIABILITY UNDER  
16       WHAT STRIKES ME AS ODD QUEBEC STATUTES, IT DOESN'T  
17       DISCLOSE IT.  WHETHER I WOULD FORCE IT TO DISCLOSE IT IF  
18       THERE WAS A DISCOVERY MOTION BEFORE ME, I DON'T KNOW  
19       BECAUSE I HAVEN'T HAD THAT DISCOVERY MOTION.

20               BUT I DID SAY, AND IT HAS BEEN THROWN BACK AT ME BY  
21       THE JUDGMENT CREDITORS HERE, THAT I WOULD LOOK AT A NARROW  
22       -- A MORE NARROWLY TAILORED REQUEST.  AND I THINK THIS IS  
23       PROBABLY AS NARROWLY TAILORED AS A JUDGMENT CREDITOR CAN  
24       DO UNDER WHAT I BELIEVE ARE UNIQUE CIRCUMSTANCES TO  
25       ANYTHING I'VE EVER SEEN IN MY 30-PLUS YEARS IN LAW  
26       PRACTICE.  APPARENTLY THESE KINDS OF QUEBEC STATUTES THAT  
27       WE'RE DEALING WITH HERE ARE NOT UNKNOWN TO THE LAW, BUT I  
28       HAD NEVER SEEN THEM.  AND I CERTAINLY HAVE NEVER SEEN THEM



1 IN THE POSTURE THAT WE'RE DEALING WITH HERE.

2 WHAT I DO NOTE -- I'M NOT SURE HOW RELEVANT IT IS --  
3 ULTIMATELY, I DETERMINED IT WASN'T RELEVANT -- THE  
4 ASSERTION BY THE JUDGMENT CREDITORS THAT QUEBEC WOULD  
5 ENFORCE ITS OWN STATUTES QUEBEC COURTS HAS NOT BEEN SHOWN.  
6 IT'S BEEN ASSERTED, BUT NOT SHOWN.

7 IN FACT, IN AMONG THE VERY LITTLE OF THE ARTICLES  
8 THAT WERE PROVIDED TO ME, THERE WAS A STATEMENT THAT THERE  
9 WAS A CASE ON APPEAL -- I THINK THIS IS AN OLD ARTICLE --  
10 AND NO ONE PROVIDED ME WITH WHAT HAPPENED WITH THAT  
11 APPEAL. I CAN AT LEAST HYPOTHESIZE THAT A QUEBEC COURT  
12 EITHER UNDER ITS OWN CONSTITUTION OR UNDER THE CANADIAN  
13 CONSTITUTION OR ANYTHING EQUIVALENT TO IT -- BELIEVE ME, I  
14 KNOW NOTHING ABOUT CANADIAN LAW AND I'M PROBABLY SHOWING  
15 IT RIGHT NOW -- WOULD FIND THAT SOME OR ALL OF THESE  
16 PROTECTIONIST STATUTES DON'T APPLY. BUT, I DON'T -- NO  
17 ONE CITED TO ME, AND MAYBE HERE'S SOMETHING THAT I'M  
18 THROWING OUT A BONE TO YOU, MS. GAMBINO -- NO ONE CITED TO  
19 ME THAT I -- THE ONLY ISSUE THIS KIND OF ASSIGNMENT OF  
20 RIGHTS ORDER UNLESS I FIND THAT THE JUDGMENT CREDITOR IS  
21 UNABLE TO GO TO THE SOURCE OF THE BANK ACCOUNTS, I.E.  
22 DOMESTICATE THE JUDGMENT AND ENFORCE UNDER QUEBEC LAW.  
23 AND I COULDN'T FIND ANYTHING THAT REQUIRED THAT.

24 **MS. GAMBINO:** YES, YOUR HONOR, THANK YOU FOR THROWING  
25 ME THAT BONE, BUT I COULDN'T CATCH IT. I APPRECIATE THAT.

26 **THE COURT:** SO, I'M NOW GIVING YOU A LITTLE BIT MORE  
27 OF THE EFFORTS I MADE HERE AND THE THINKING THAT I HAD.

28 **MS. GAMBINO:** YOUR HONOR, I JUST HAVE A COUPLE POINTS

1 AND I KNOW MR. COOK WILL WANT TO TO RESPOND.

2 THE COURT: SURE.

3 MS. GAMBINO: JUST GETTING BACK FOR A MINUTE TO THE  
4 CITY OF KING CITY CASE THAT THE COURT CITED IN THE  
5 TENTATIVE RULING. I DID READ THAT CASE LAST NIGHT AND I  
6 HAD NOT SEEN THAT CASE BEFORE. I APPRECIATE THE COURT  
7 BRINGING THAT TO MY ATTENTION. BUT WITH ALL DUE RESPECT,  
8 IT DID NOT SEEM TO BE ON THE POINT AS FAR AS THIS CASE IS  
9 CONCERNED BECAUSE IT HAD TO DO WITH -- IT HAD TO DO WITH  
10 THE VOLUNTARY ASSIGNMENT OF A DEPOSIT ACCOUNT BY THE  
11 PURPORTED OWNER OF THAT ACCOUNT. THE CITY ASSIGNED THE  
12 ACCOUNT TO THE BANK AS COLLATERAL ON A LOAN. THIS IS A  
13 DIFFERENT SITUATION WHERE WE ARE TALKING ABOUT WHAT THE  
14 COURT CAN ORDER AS AN ASSIGNMENT OF RIGHTS.

15 THE COURT: I COMPLETELY AGREE. THE CITATION *CITY OF*  
16 *KING CITY* OR AS I NOW LOOK AT IT --

17 MS. GAMBINO: YES.

18 THE COURT: -- THE TENTATIVE RULING HAS A TYPO. IT  
19 SAID "CITY OF KING KING" WHEN IT SHOULD HAVE SAID, *CITY OF*  
20 *KING CITY*" -- WAS ONLY INTENDED FOR THE VERY NARROW  
21 PURPOSE OF SAYING THAT BANK ACCOUNTS CAN BE ASSIGNED.  
22 BECAUSE I THINK EITHER EXPLICITLY OR IMPLICITLY, ONE OF  
23 YOUR ARGUMENTS WAS THAT BANK ACCOUNTS ARE NOT ASSIGNABLE  
24 TO PROPERTY.

25 MS. GAMBINO: UNDER THE STATUTE.

26 THE COURT: RIGHT. BUT THE STATUTE DOESN'T SAY WHAT  
27 IS OR IS NOT COVERED OTHER THAN THE SIX SPECIFIED MATTERS  
28 -- SIX SPECIFIED PAYMENTS. AND IT'S SUGGESTIVE THAT IT

1       COVERS ALL ASSIGNABLE PAYMENTS WITH THE PROVISIO OF THE  
2       FIRST FEW WORDS "EXCEPT AS OTHERWISE PROVIDED BY LAW."  
3       I'M NOT SAYING THAT IT DOES SAY THAT DIRECTLY, BUT IT'S  
4       SUGGESTIVE OF THAT.

5               AND SO THEN AS PART OF MY INQUIRY IN TRYING TO FIGURE  
6       THIS STRANGE ANIMAL OUT, I WANTED TO KNOW WHETHER BANK  
7       ACCOUNTS WERE ASSIGNABLE. I CERTAINLY HAD NEVER ASSIGNED  
8       A BANK ACCOUNT. I DON'T KNOW IF I KNEW OF ANYBODY WHO  
9       EVER ASSIGNED A BANK ACCOUNT. SO, I WANTED TO KNOW  
10       WHETHER BANK ACCOUNTS COULD BE ASSIGNED. AND THE LIGHTS  
11       LIT UP WHEN I PUT IN A WESTLAW SEARCH. AND I ONLY GAVE  
12       YOU THE MOST RECENT CASE THAT REFERRED TO THAT. AND SO IT  
13       WAS NOT INTENDED -- I APOLOGIZE TO CAUSING YOU THE GRIEF  
14       OF HAVING YOU READ THAT DECISION WHEN IT WAS NOT INTENDED  
15       TO BE READ BUT JUST KIND OF QUICKLY SCANNED.

16              SO, I THOUGHT ABOUT THIS LONG AND HARD AND I THINK  
17       THAT'S WHAT I'M TRYING TO TELL YOU. I RECOGNIZE THIS IS A  
18       HOTLY CONTESTED ISSUE. I RECOGNIZE THAT IMPLICITLY I AM  
19       STEPPING ON THE TOES OF THE QUEBEC AUTHORITIES. MAYBE  
20       MORE THAN THE TOES: MAYBE STOMPING ON THE FEET OF THE  
21       QUEBEC LEGISLATURE. BUT I THINK THAT THAT STOMPING REALLY  
22       OCCURRED WHEN PRESUMABLY A COLLEAGUE OF MINE AT SOME TIME  
23       DOWN THE ROAD -- OR EARLIER DOWN THE ROAD OVERRULED AN  
24       OBJECTION TO THIS COURT EVENING EXERCISING JURISDICTION IN  
25       AN ASBESTOS EXPOSURE CASE AGAINST ACL, AND WHAT I'M JUST  
26       DOING IS A NATURAL OUTGROWTH OF THAT. ONCE THIS COURT  
27       ALLOWS THE CASE TO GO FORWARD AGAINST ACL AND THE JUDGMENT  
28       IS ENTERED AGAINST ACL, ACL IS SUBJECT TO ALL THE SAME

1 ENFORCEMENT OF JUDGMENT PROCEDURES THAT ANY OTHER JUDGMENT  
2 DEBTOR WOULD FACE, WITH THE CAVEAT THAT ACL'S ASSETS ARE  
3 OUTSIDE THE LEVYING AUTHORITY OF THIS COURT.

4 MS. GAMBINO: THANK YOU, YOUR HONOR.

5 ON THAT NOTE, I WOULD JUST LIKE TO CLARIFY WHAT THE  
6 RULING IS THAT IF ACL HAS DEPOSIT ACCOUNTS IN THE FIVE  
7 BANKS IN QUEBEC THAT WERE IDENTIFIED IN THE MOVING PAPERS,  
8 THEY ARE NOW -- THEY MUST ASSIGN THE RIGHTS TO THOSE  
9 ACCOUNTS TO THE PLAINTIFFS AND THEY MAY NOT TRANSFER THOSE  
10 RIGHTS AT THIS TIME.

11 THE COURT: RIGHT.

12 MS. GAMBINO: AND THAT'S THE EXTENT OF THE RULING,  
13 CORRECT?

14 THE COURT: THAT IS PERFECTLY STATED.

15 MS. GAMBINO: THANK YOU.

16 MR. COOK: IF I --

17 THE REPORTER: I DID NOT HEAR YOU, SIR.

18 MR. COOK: IF I CAN BE HEARD?

19 THE COURT: I THINK YOU WON, THOUGH.

20 MR. COOK: WHAT?

21 THE COURT: I THINK YOU WON.

22 MR. COOK: YEAH. AS LONG AS -- IF YOUR HONOR IS  
23 STICKING TO THE TENTATIVE RULING, AND I'M A HAPPY PERSON,  
24 I HAVE NOTHING TO ADD.

25 THE COURT: I DIDN'T THINK SO.

26 MR. COOK: NOPE. NOPE.

27 THE COURT: I'M NOT SO SURE WHY YOU FEEL HAPPY.

28 MR. COOK: WELL --

1           **THE COURT:** I DON'T SAY THIS VERY OFTEN -- IN FACT,  
2 I'M NOT SURE I'VE EVER SAID THIS -- I CAN'T REMEMBER AN  
3 ORDER THAT I'VE ISSUED THAT I HAVE SUCH STRONG DOUBT ABOUT  
4 THE LACK -- THE HIGH LIKELIHOOD THAT IT'S NOT GOING TO BE  
5 COMPLIED WITH.

6           **MR. COOK:** THIS IS A -- THIS BUSINESS IS BUSINESS OF  
7 INCHES AS WE SAY IN THE FOOTBALL WORLD. AND ANY MOVEMENT  
8 FORWARD IS BETTER THAN WHERE IT WAS YESTERDAY.

9           **THE COURT:** I'M NOT IN THE BUSINESS OF ISSUING ORDERS  
10 THAT ARE NOT GOING TO BE COMPLIED WITH.

11           **MR. COOK:** CORRECT.

12           **THE COURT:** BUT I RECOGNIZE THAT THERE'S A HIGH  
13 LIKELIHOOD THAT THAT'S GOING TO HAPPEN HERE. I DECIDED TO  
14 ISSUE IT ANYWAY BECAUSE I THINK THE CALIFORNIA LAW  
15 SUPPORTS THE ISSUANCE OF THE ORDER. AND I RECOGNIZE THAT  
16 THE NEXT MOVE IN THIS BUSINESS OF INCHES, AS YOU DESCRIBED  
17 IT, IS PROBABLY GOING TO BE ACL'S ASSERTION THAT WHAT I  
18 HAVE DONE VIOLATES ITS GREATER RIGHTS UNDER OTHER LAW. I  
19 DON'T THINK IT IS A SURPRISE TO ANY OF US.

20           **MR. COOK:** YES.

21           **THE COURT:** BUT, WE WILL ALL STAY TUNED AS TO WHAT  
22 THE NEXT STEP IS.

23           DO YOU HAVE A PROPOSED ORDER THAT --

24           **MR. COOK:** YES, I --

25           **THE REPORTER:** JUDGE, I'M SORRY, I WAS UNABLE TO HEAR  
26 THE END OF YOUR SENTENCE.

27           **MR. COOK:** THE ANSWER IS --

28           **THE REPORTER:** ONE SECOND, SIR.

1           **THE COURT:** DO YOU HAVE A PROPOSED ORDER THAT YOU CAN  
2 SHOW TO MS. GAMBINO?

3           **MR. COOK:** I HAVE SHOWN ONE. THANK YOU.

4           **MS. GAMBINO:** YES, YOUR HONOR, I HAVE A COPY OF IT.  
5 I HAVEN'T HAD A CHANCE TO READ IT.

6           **THE COURT:** OKAY.

7           **(WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)**

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1 STATE OF CALIFORNIA )  
 2 ) SS.  
 3 COUNTY OF SAN FRANCISCO )  
 4  
 5  
 6

7 I, LAVENA WARD, Certified Shorthand Reporter and Official  
 8 Court Reporter of the Superior Court of the State of  
 9 California, hereby certify:

10 That the foregoing contains a true, full and correct  
 11 transcript of the proceedings given and had in the within-  
 12 entitled matter, and was reported by me at the time and  
 13 place mentioned, and thereafter transcribed by me into  
 14 longhand typewriting, and that the same is a correct  
 15 transcript of the proceedings.  
 16  
 17  
 18  
 19

20 DATED: November 9, 2010  
 21 San Francisco, California  
 22  
 23  
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